

(2013) 04 BOM CK 0087
In the Bombay High Court
Case No : First Appeal No. 1134 of 2012

United India Assurance Co. Ltd.

APPELLANT

Vs

Sureshkumar Parasnath Singh, M/s. Mahindra and Mahindra
Ltd. and M.G.M. Motors

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Workmens Compensation Act, 1923 — Section 30

Citation : (2013) ACJ 2853 : (2013) 4 ALLMR 164 : (2013) 138 FLR 414 :
(2013) LLR 799 : (2013) 4 MhLj 515

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : K.W. Vitonde, for the Appellant; Pallavi Dabholkar instructed by .
A.M. Gokhale for Respondent No. 1, Mr. K.S. Bapat instructed by . G.H. Keluskar,
for the Respondent

Final Decision : Dismissed

Judgement

A.H. Joshi, J.—This is an appeal u/s 30 The Workmen's Compensation Act, 1923. This being an appeal under The Employees' Compensation Act, 1923, the appellant has to substantiate the challenge on the substantial questions of law. This court had directed learned Advocate for the appellant to pin point and address the court on substantial question of law.

2. Learned Advocate for the appellant has presented substantial question of law as follows:-

Whether the Commissioner for Workmen's Compensation, Mumbai was right in awarding compensation to the complainant under The Employees' Compensation Act, 1923 inspite of admitted fact that the deceased was not employed by the appellant, and rather he was employed by the contractor?

3. Admittedly, the victim was not employed by Mahindra & Mahindra Limited the appellant-the owner of the vehicle. The victim was rather employed by "M.G.M.

Motors" to whom the work/contract for transport of the motor vehicle was entrusted by Mahindra and Mahindra Limited.

4. In order to ascertain the fact as to whether the engagement of employee concerned was really authorised, this court has asked certain questions to learned Advocate for the appellant.

The said questions by court and answer thereto given by learned Advocate for the appellant are as follows:

Question No. 1:-

Was the contractor in M.G.M. Motors under an obligation to transport the vehicle by loading on other vehicle?

Question No. 2:-

Did the contract with M.G.M. Motors contemplate taking/transport of the vehicle from one point to the other for Mahindra & Mahindra Ltd. for taking the vehicle by driving and engagement of driver was to be done by M.G.M. Motors?

Answer:-

The vehicle of Mahindra & Mahindra Ltd. was required to be taken from one place to other by actually driving it on the road, by a driver to be engaged by M.G.M. Motors.

The answer comprehends reply to question no. 1 and 2 common to both questions.

5. On the facts which are admitted, it has revealed that services of Sureshkumar Parasnath Singh, employee of respondent no. 1 was engaged by "M.G.M. Motors", respondent no. 3 for and on behalf of Mahindra & Mahindra Ltd., respondent no. 2. Thus, liability towards an employee engaged by contractor or a managing agent is on the principal employer.

6. Though it is not eloquently argued, but it is suggested that since the driver was engaged by the "M.G.M. Motors", the appellant does not have the liability towards payment of compensation. It is not pleaded and proved that due to any terms of contract between Mahindra & Mahindra Ltd. On one hand and M.G.M. Motors on the other, that the liability towards employees' compensation under Employees' Compensation Act was to be borne by the "M.G.M. Motors".

7. Irrespective as to terms inter vivos, the employee concerned is seen to be entitled to receive the compensation, considering definition of the term "employee", "employer" and "managing agent". These definitions read as below:-

2. (dd) (ii) "employee" means person, who is-

(c) a person recruited as driver, helper, mechanic, cleaner or in any other

capacity in connection with a motor vehicle,

(e) "employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of an employee are temporarily lent or let on hire to another person by the person with whom the employee has entered into a contract of service or apprenticeship, means such other person while the employee is working for him;

(f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;

8. These definitions make it eloquent that law recognizes inseparable bond between the driver and owner irrespective of managerial and administrative devices and the nomenclature, garmenting from fertile brains of managerial and administrative consultants and of legal jargons.

9. Therefore only question of law presented as a substantial question of law thus sounds well on reading, but is wholly unsupported as well by the facts and by law. Rather the said question does not at all arise between the parties considering the facts of the case. Therefore, the appeal has no merits and is dismissed with costs throughout.